

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-186005

DATE: AUG 13 1976

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MATTER OF: Gerald Rowell and Marvin Griffin, Jr. - Overtime compensation for travel during non-duty hours

DIGEST: (1) Where event necessitating travel is uncontrollable, specifically travel to render technical assistance in investigation of air accident, fact that employees were in standby status to render immediate assistance if requested, does not make travel result from administratively controllable event. Such travel during non-duty hours is compensable under 5 U.S.C. § 5542(b)(2)(B)(iv). See B-163654, April 19, 1968.

(2) Where event necessitating travel is uncontrollable, and travel was requested "as soon as possible" to render technical assistance in investigation of air accident, fact that agency set employees departure time, which complied with the request for immediate travel, does not make travel result of administratively controllable event. Such travel during non-duty hours is compensable under 5 U.S.C. § 5542(b)(2)(B)(iv).

Lt. Col. C. G. Nieman, USAF, an Accounting and Finance Officer at Headquarters, Warner Robins Air Logistics Center, Robins Air Force Base, Georgia, requests an advance decision on the propriety of paying claims for overtime compensation of Mr. Gerald Rowell and Mr. Marvin Griffin, Jr. Mr. Rowell and Mr. Griffin are civilian employees of the Directorate of Materiel Management at Warner Robins Air Logistics Center. Mr. Rowell is a mechanical engineer; Mr. Griffin is an equipment specialist (aircraft).

The overtime compensation claimed is for travel during non-duty hours from Robins Air Force Base, Georgia, to Nakhon Phanom Airport, Thailand, to assist in the investigation of a downed helicopter. Said overtime is claimed under the provisions of 5 U.S.C. § 5542(b)(2)(B)(iv) (1970) which states:

"(b) For the purpose of this subchapter --

"(2) time spent in a travel status away from the official-duty station of an employee is not hours of employment unless--

"(B) the travel * * * (iv) results from an event which could not be scheduled or controlled administratively."

The record shows that on Thursday, January 30, 1975, the Directorate of Materiel Management received a priority message which requested that it provide technical assistance "as soon as possible" in the investigation of the crash of an Air Force helicopter in Thailand. The same day Mr. Rowell and Mr. Griffin were dispatched. Their travel orders contained the following notation: "Travel during non-duty hours is not compensable as overtime." Upon the returning from Thailand Mr. Rowell and Mr. Griffin each requested payment of 32 hours overtime for travel during non-duty hours occurring on January 30 and 31, and February 1 and 2, 1975.

The Accounting and Finance Officer requests an advance decision concerning the force and effect of (1) the prohibitory statement in the travel orders concerning overtime and (2) the subsequent refusal of the employees' supervisors to certify the overtime.

With regard to the statement on the travel orders concerning overtime, we note that the Federal Travel Regulations (FPMR 101-7) (May 1973) which regulates "official travel for civilian employees of Government agencies, including the Department of Defense" (see FPMR 101-7, para. 1-1.2a) contain no provisions governing overtime. Accordingly, any provision contained in a travel order which either proscribes or proscribes overtime is without force or effect. Overtime may be authorized only in accordance with the provisions of 5 U.S.C. § 5542.

With regard to the lack of certification of the overtime, the record indicates that the Directorate of Materiel Management (DMM) did not certify the overtime because they believed that the travel was within the administrative control of the Air Force in that the employees were on standby to render assistance, if so requested. Also, DMM set the time of the employees' departure after the request was received, and DMM had the ability to order their departure, if it so desired, at some other time. Thus, in

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the opinion of DMM the travel did not meet the requirements of 5 U.S.C. § 5542(b)(2)(B)(iv). However, the headquarters, United States Air Force (DPCMM) advised that overtime compensation is payable in similar circumstances during the initial phase of an accident investigation and that, in their view, the initial phase of this particular accident investigation was still in progress during the period of these claims.

In our decision B-163654, April 19, 1968, we addressed a similar question involving travel during non-duty hours in connection with the investigation of an air accident. In that decision, requested by the National Transportation Safety Board, we held that travel during non-duty hours incident to the initial phase of the investigation of an air crash was compensable overtime under 5 U.S.C. § 5542(b)(2)(B)(iv). Such travel resulted from an unscheduled and administratively uncontrollable event. We found that travel was administratively uncontrollable for employees who were under standing orders to proceed to an accident site, as well as employees who were subsequently ordered to proceed to the accident site or some other location to participate in an ongoing investigation.

The record indicates that Mr. Rowell and Mr. Griffin were dispatched to render technical assistance during the initial phase of an ongoing accident investigation. The fact that the employees had been placed on standby when word of the accident was received in order to affect an immediate response if assistance was requested does not change the nature or controllability of the event necessitating the travel. Our decision, B-163654, supra, clearly intended that employees who were called in to assist in the initial phase of investigation of an air accident be compensated when travel during non-duty hours was necessary.

Accordingly, the travel during non-duty hours of Mr. Rowell and Mr. Griffin is compensable overtime under 5 U.S.C. § 5542(b)(2)(B)(iv). The vouchers may be certified for payment in accordance with the above, if otherwise proper.

R.F.KELLER

Deputy

Comptroller General
of the United States